



2024:DHC:8870



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 13.11.2024+ **ARB.P. 1715/2024**(22) **M.V. OMNI PROJECTS (INDIA) LTD.**

.....Petitioner

Through: Mr. Piyush Gupta (CGSC) along with
Mr. Prateek Gupta, Adv.
Mr. Akash Swami, Adv.

versus

**UNION OF INDIA THROUGH DY. CHIEF ENGG., NORTHERN
RAILWAY & ANR.**

.....Respondents

Through: Mr. Saroj Bidawat (SPC), Mr. Gaurav Sharma (SPC) along with Mr. Siddhartha Nagpal, Mr. Sachin Singh, Adv.
Ms. Neha Rastogi (SPC) along with
Mr. Animesh Rastogi, Adv.

+ **ARB.P. 1716/2024**(23) **M.V. OMNI PROJECTS (INDIA) LTD.**

.....Petitioner

Through: Mr. Piyush Gupta (CGSC) along with
Mr. Prateek Gupta, Adv.
Mr. Akash Swami, Adv.

versus

**UNION OF INDIA THROUGH DY. CHIEF ENGG., NORTHERN
RAILWAY & ANR.**

.....Respondents

Through: Mr. Saroj Bidawat (SPC), Mr. Gaurav Sharma (SPC) along with Mr. Siddhartha Nagpal, Mr. Sachin Singh, Adv.

+ **ARB.P. 1717/2024**(24) **M.V. OMNI PROJECTS (INDIA) LTD.**

.....Petitioner

Through: Mr. Piyush Gupta (CGSC) along with
Mr. Prateek Gupta, Adv.
Mr. Akash Swami, Adv.

versus

**UNION OF INDIA THROUGH DY. CHIEF ENGG., NORTHERN
RAILWAY & ANR.**

.....Respondents

Through: Mr. Saroj Bidawat (SPC), Mr. Gaurav



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Sharma (SPC) along with Mr. Siddhartha Nagpal, Mr. Sachin Singh, Adv.

+ **ARB.P. 1718/2024**

(25) M.V. OMNI PROJECTS (INDIA) LTD.

.....Petitioner

Through: Mr. Piyush Gupta (CGSC) along with Mr. Prateek Gupta, Adv.
Mr. Akash Swami, Adv.

versus

UNION OF INDIA THROUGH DY. CHIEF ENGG., NORTHERN RAILWAY & ANR.

.....Respondents

Through: Mr. Saroj Bidawat (SPC), Mr. Gaurav Sharma (SPC) along with Mr. Siddhartha Nagpal, Mr. Sachin Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a Sole Arbitrator for adjudicating the disputes between the parties.

2. The disputes between the parties have arisen in context of the contracts bearing agreement no.74-W/3/2/348/WA/LKO dated 10.06.2011(Arb.P.1716/2024); agreement no.74-W/3/2/349/WA/LKO dated 10.06.2011 (Arb.P.1717/2024); agreement no.74-W/3/2/350/WA/LKO dated 15.07.2011(Arb.P.1715/2024); agreement no. 74-W/3/2/352/WA/LKO dated 15.07.2011(Arb.P.1718/2024) wherein the petitioner was engaged for carrying out earth work and blanketing in embankment and cutting including mechanical compaction for doubling of the Zafrabad-Utratia section of



Lucknow Division of Northern Railway.

3. The relevant contractual conditions in the aforementioned agreements contain the following identical provision for dispute resolution, which is as under:-

63. Matters finally determined by the Railway – All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall within 120 days after receipt of the contractor's representation make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) to (xiii) (B) of General Conditions of contract or in any clause of the special conditions of the contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the arbitration clause.

64 (1) (i) - Demand for Arbitration

In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "**excepted matters**" referred to in Clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

64 (1) (ii) - The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.



64 (1) (ii) - (a) *The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.*

(b) The claimant shall submit his claim stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

(d) The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

64 (1) (iii) - *No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.*

64 (1) (iv) - *If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.*

64 (2) - Obligation During Pendency of Arbitration - *Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.*

64 (3) (a) (i) - *In cases where the total value of all claims in question added together does not exceed Rs.10,00,000/- (Rupees ten lakhs only), the Arbitral tribunal shall consist of a sole arbitrator who shall be a gazetted officer of Railway not below JA grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.*



64 (3) (a) (ii) - In cases not covered by the clause 64(3) (a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Rly. Officers not below JA grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Rly. Officers of one or more departments of the Rly. which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64 (3) (a) (iii) - If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

64 (3) (a) (iv) - The arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal should record day to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.



64 (3) (a) (v) - While appointing arbitrator(s) under sub-clause (i), (ii) & (iii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

64 (3) (b) (i) - The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.

64 (3) (b) (ii) - A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award and interpretation of a specific point of award to tribunal within 60 days of receipt of the award.

64 (3) (b) (iii) - A party may apply to tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

64(4) In case of the Tribunal, comprising of three Members, any ruling or award shall be made by a majority of Members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

64(5) Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

64(6) The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by the Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/ are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.



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64(7): Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and any statutory modifications thereof shall apply to the arbitration proceedings under this clause.”

4. By an order dated 07.10.2024, this Court set aside the arbitral awards passed by the arbitral tribunal, constituted for the purpose of adjudication of the disputes between the parties. *Vide* the said order, liberty was also granted to the petitioners to constitute a fresh arbitral tribunal with mutual consent to adjudicate the disputes between the parties and in the event of failure to do so, to approach this Court for appointment of an independent Sole Arbitrator. Hence, the present petition has been filed.

5. Notice in the present petition was issued on 28.10.2024.

6. Learned counsel for the respondent does not dispute the existence of an arbitration agreement. Further, he accedes, that in terms of the judgement of the Supreme Court in ***Central Organisation for Railway Electrification v. M/s. ECI SPIC SMO MCML (JV) A Joint Venture Company*** 2024 INSC 857, an independent Sole Arbitrator is required to be appointed to adjudicate the disputes between the parties.

7. It is also noticed that an identical arbitration clause has also been construed by this Court in ***M/s. M.V. Omni Projects (India) Ltd. V. Union of India, Through Dy. Chief Engineer/Const.-II/Northern Railway*** 2024:DHC:7874, in which an independent sole arbitrator was appointed by this Court.

8. Accordingly, with the consent of the parties, Justice (Retd.) L. Nageswara Rao, former Judge, Supreme Court of India (Mob.: 9810035984) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.



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9. While a common arbitrator is being appointed in these connected matters, in view of the separate arbitration agreements, as incorporated in the different contracts between the parties, it is directed that the reference under each contract shall be independent of each other, even though the arbitrator may hold common sittings for the sake of convenience.

10. The respondent shall be entitled to raise appropriate objections as to the jurisdiction/arbitrability, if any, and move an application under Section 16 of the Arbitration and Conciliation Act, 1996 for this purpose. Needless to say, in the event of any such application being filed, the same shall be dealt with and adjudicated upon by the learned Sole Arbitrator in accordance with law.

11. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

12. The learned Sole Arbitrator shall fix his fees in consultation with the parties.

13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

14. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

15. The present petition stands disposed of.

SACHIN DATTA, J

NOVEMBER 13, 2024/dn